



REPUBLIC OF KENYA



**Republic v Oriaro (Criminal Case E004 of 2021)
[2023] KEHC 911 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E004 OF 2021
JR KARANJA, J
FEBRUARY 16, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

MOSES ODUORI ORIARO ACCUSED

JUDGMENT

- [1] The charge against the accused, Moses Oduor Oriaro, is that of murder, contrary to S.203 as read with S.204 of the [Penal Code](#), in that on the December 28, 2017 at Namusala Butula within Busia County murdered Godfrey Otieno Taabu.
- [2] The prosecution case was founded on the facts that the deceased was a well-known person in the village of Namusala but with a reputation of generally being a rowdy individual. On the December 27, 2017, he was allowed into a memorial ceremony at the homestead of a retired accountant, Nicholas Obiero Were (PW 1) but left at about 3.00 p.m. only to be found by Morris Oduori Ojwang (PW 2) at about 8.00 p.m. lying down on the ground and unresponsive. He appeared to have been injured.
- [3] At about the same time, the accused proceeded to the homestead of Redempta Achieng Ogwallo (PW 3), holding a bottle of whisky and explaining why he ejected the deceased from the memorial ceremony. She (PW 3) had also attended the ceremony when she saw the accused carry the deceased and toss him near the gate to her homestead for reason that he had become a nuisance and was disturbing people.
- [4] Redempta (PW 3) after being alerted by a villager confirmed that the deceased was found near her gate while lying down on the ground and snoring.

On the following day, screams rent the air at the village upon discovery by the villagers that the deceased had passed away.



The police were notified and P.C. William Losoit (PW 4), of Soweto police station in Nairobi while on duty at the station on January 31, 2021, received a report from one George Lambert that he had been threatened by a fellow resident of Soweto.

- [5] The police officer (PW 4) in the course of investigating the matter learnt that the culprit had previously killed a person and escaped to Mombasa. The officer contacted the chief in Bumala-Busia and verified the information given to him. Later, on the February 4, 2021, the chief contacted the officer and gave him information on the whereabouts of the culprit. He proceeded to a certain spot in Soweto Nairobi accompanied by George, the complainant.

George pointed out the culprit who happened to be the accused and who was immediately arrested and handed over to the Busia police.

- [6] Daniel Lekuta (PW 5), left Bumala police station in Busia and proceeded to Nairobi on February 5, 2021 with a mission to receiving the accused who had allegedly committed the present offence and was at large although the matter had been investigated and all that remained was the arrest and arraignment of the accused in court. Indeed, the accused was after his arrest in Nairobi charged with the present offence which he denied.

- [7] In his defence, the accused confirmed that he attended the material ceremony at the homestead of his uncle (PW 1) where he saw the deceased as one of the many attendants, but at about 4.00 p.m., the deceased became a nuisance and was contained or restrained. He (accused) then removed him from the compound and left the scene.

- [8] On the following morning, the accused heard screams and upon enquiring learnt that the dead body of the deceased was found outside the gate of a lady neighbour who lied and alleged that she had seen him dropping the deceased outside her gate. He was later arrested in Nairobi where he normally worked and had come to his home in Busia to attend the memorial ceremony of his aunt.

- [9] In both the prosecution and defence cases there is no contest with regard to the death of the deceased and the manner it was caused as may be deciphered from the autopsy report (P.EX 1) availed through P.C. Lekuta (PW 5) by consensus of both sides.

The report indicates that the death of the deceased was a result of severe head injury secondary to blunt trauma.

- [10] This implied that the deceased was a victim of an act of assault committed against him by an individual/ individuals or a tragic accident occasioned by his falling down and hitting the ground hard with his head.

The evidence by Morris (PW 2) and Redempta (PW 3) strongly indicated that the deceased was a victim of assault by an individual or individuals.

Morris found the deceased lying down along a path unresponsive, injured but conscious.

Redempta had on the same day seen the deceased being manhandled and ejected from the homestead of Nicholas (PW 1) for being a nuisance at the memorial ceremony.

- [11] The prosecution having established that the deceased was more a victim of assault rather than a tragic accident, the only issue that emerged for determination was whether the deceased was assaulted and occasioned fatal injury by the accused.

The defence raised by the accused was a denial of any wrong doing in the death of the deceased. He indicated that he only removed the deceased from the ceremony and out of the homestead of Nicholas (PW 1). Thereafter, he went away only to learn of the death of the deceased on the following day.



- [12] Although the prosecution did not avail direct evidence against the accused placing him at the scene as the assailant of the deceased, the indirect or circumstantial evidence availed against him was sufficient and credible enough to establish that most likely than not he was the person who assaulted and used excessive force against the deceased. He was seen by Redempta (PW 3) at the ceremony manhandling the deceased. He later on the same day went to see Redempta at her home to explain why he had to remove the deceased from the scene of the ceremony.
- [13] Coincidentally, the explanation was being given at the time when Morris (PW 2) spotted the deceased lying down near Redempta's homestead at the gate or nearby. The accused did not deny removing the deceased from the ceremony but implied that he did not assault him. However, the indirect evidence against him in that regard was more consistent with his guilt rather than innocence. This was further compounded by the undisputed evidence that he disappeared to Nairobi after his unlawful act and learning that the deceased had passed away. He could not have done so if he was innocent and knowing that he was a person of interest in the circumstances which led to the death of the deceased.
- [14] It is worth noting that as per the evidence of P.C. Lekuta (PW 5) the accused remained at large and a fugitive even after necessary investigations were carried out and concluded. He was traced and arrested in Nairobi only after he had threatened to kill a person and the person reported the matter to the police at Nairobi who in turn learnt that he was a "wanted" person in his home county of Busia for the death of the deceased.
- [15] The accused's conduct after learning of the deceased's death divested any notion of his innocence in the fatal attack and injury of the deceased and provided credible circumstantial evidence against him. The inculpatory facts as narrated by the prosecution proved to be inconsistent with the innocence of the accused and incapable of explanation or any other hypothesis other than that of his guilt (see *R v Kipkering arap Koske & another* 16 EACA 135).
- [16] It is therefore the finding of this court that the deceased was assaulted and fatally injured by no other person than the accused. He used excessive force with the intention of causing grievous harm to the deceased and by so doing, caused his death.

The prosecution case was thus proved beyond reasonable doubt to the extent that the accused must and is hereby found guilty of murdering the deceased and is convicted accordingly.

J.R. KARANJAH

J U D G E

[DATED AND DELIVERED THIS 16TH DAY OF FEBRUARY, 2023]

